

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13635, of Tae Hee Yoo, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Sub-sections 7104.2 and 7105.2, to change a non-conforming use from dry cleaning, valet, laundry pick-up, first floor to a newspaper distribution station and office, part of first floor and to extend the office use to a portion of the second floor in an R-5-B District at the premises 1314 - 21st Street, N.W., (Square 69, Lot 228).

HEARING DATES: January 13 and February 3, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of January 13, 1982. It was continued because of a severe snow storm to the public hearing of February 3, 1982.

2. The subject site site comprises the rear of the premises located on the southwest corner of the intersection of 21st Street and Newport Place and is known as premises 1314 21st Street, N.W. It is in an R-5-B District.

3. The lot consists of 2,480 square feet of land area, and is developed with a three-story structure built to the north and east lot lines and occupying about fifty percent of the lot. The remainder of the lot is developed with garages, three single garages on Newport Place and one double garage on the north-south alley to the rear of the lot. The front two-thirds of the first floor is occupied by an art gallery-antique store. The rear one-third of each of the first and second floors is currently occupied by the applicant. This rear portion has a separate entrance off of Newport Place.

4. The site is located in a residential area. To the west are two-story row dwellings on Newport Place. North, south, and east of the site are large row dwellings interspersed by small apartment buildings. Further south and west are large apartment buildings, followed by the central business district. Newport Place is a narrow street having a twenty-six foot roadway with one-way westbound traffic on its one traffic lane. Twenty-first Street is one-way southbound. Area parking is regulated under the Residential Parking Permit Program. The site is within an

R-5-B District that extends south to N Street, north to near P Street, east to near New Hampshire Avenue, and west to Rock Creek Park. This district is adjacent to CR, C-2-C, C-2-B, SP-2, and R-5-D Zone Districts.

5. There are five condominium units in the structure on the property. The applicant owns one unit consisting of a first and second floor. The applicant has occupied his unit since August 1981 and has been using it as an office. The applicant does not reside on the site. The office has been in existence since shortly after the applicant purchased the property. The purchase contract and the public offering statement provided that the seller would guarantee that at least by settlement time all zoning permits would have been issued insuring that the property could be used for the proposed office use. At settlement, the applicant optioned to close on the property and to take his chances with the BZA, even though no Certificate of Occupancy had been issued for the use of the premises as an office. The applicant was aware that, if the BZA denied the application, the use must cease.

6. The applicant has purchased approximately 350 square feet of the first floor space. The second floor area of approximately 1,200 square feet has no certificate of occupancy history and has no independent entrance to street level except through the first floor portion of the subject premises. The applicant owns approximately 590 square feet of the second floor space.

7. The offices will be used for the distribution of the Korean Times Community Newspaper. The staff will consist of four persons. The office is open daily, Monday through Friday. The only machinery on the site will be a mailing address machine located on the first floor. The second floor will contain desks and telephones. The paper has a circulation of 2,000. The subscribers are located in the District of Columbia, Virginia, Maryland and along the east coast including Florida. There will be no visitors to the office. There will be daily delivery at about 8 A.M. of the papers by a van from Maryland to the site. The van is parked in the garage owned by the applicant on the site. The applicant does not usually arrive at the office until the delivery is completed so that the garage space can be available for his use. There is no loading berth and no open area on the site available for parking a delivery vehicle. The three other staff members drive to work. The applicant has made arrangements for them to park their cars in a nearby commercial parking lot operated by Colonial Parking. When the papers have been addressed, they are delivered daily to the Post Office. The daily addressing of the papers takes about two hours and is handled by two staff members.

8. The proposed use is not a neighborhood facility. Its activities are oriented to a far greater area than any single neighborhood.

9. The applicant testified that he will comply with the standards of external effects established in Sub-section 6101.5 of the Zoning Regulations. There will be no further renovation or alteration to the existing structure. There will be one non-illuminated sign that measures six inches by fifteen inches on the Newport Place entrance side of the building. The use of the subject premises as a newspaper mailing office will not generate objectionable noise or vibration because the only equipment on the site will be an address label machine that will not be heard outside of the building. There will be no traffic problems generated from the use because there will be no visitors to the site and the only traffic generated will be from the daily newspaper delivery to the site made by the applicant's station wagon and the delivery of the papers to the Post Office. There will be no need for special screening. The amount of parking and loading facilities provided will be adequate because one garage parking space is provided on the site and three other spaces are leased from the nearby Colonial Parking lot.

10. The prior tenant who operated the dry cleaning establishment submitted an affidavit to the record detailing the activities of his use. Specifically, he attested that the prior laundry store utilized all available space on the first floor of the structure, that the hours of operation were from 7:30 A.M. to 6:30 P.M. on weekdays and 8:00 A.M. to 6:00 P.M. on Saturdays, that there were two employees, that the store averaged twenty to twenty-five walk-in customers per day, that pick-ups and deliveries were made two times daily by truck and that the truck parked on the street during pick-ups and deliveries.

11. The applicant contends that by comparing the laundry use with the proposed use, it is evident that the newspaper mailing office will not have any of the adverse effects of the prior use. There will be only four employees on the site and no visitors as compared to two employees and twenty to twenty-five visitors previously. The only traffic activity generated will be the daily delivery of the newspapers to the site and then to the post office. The dry cleaners had pick-up and delivery twice daily. The only machinery located on the site will be a small mailing address machine which cannot be heard outside the premises.

12. Both the former use and the proposed use are first permitted in a C-1 District.

13. The Office of Planning and Development by report, dated January 8, 1982, recommended that the application be

denied. The OPD reported that under Sub-paragraph 7109.121, the Board is to consider the general character of uses and structures within not less than 300 feet of the site. Newport Place and 21st Street are quiet residential streets. Any commercial use on this street, which is one of the narrowest and least active streets south of Florida Avenue, would have a destabilizing effect and constitute a threat to the residential character. The OPD also reported that the subject area has severely limited parking and Newport Place has only one traffic lane. As to the extension of the non-conforming use, the OPD noted that the renovation plans were not in adequate detail to determine if in fact structural alterations had occurred. The second floor is laid out with a kitchen. The kitchen cabinets, but not the appliances, are now in place. The OPD found that a commercial use, particularly one that involves periodic pick-ups and deliveries, is contrary to the character of this very quiet residential enclave. The OPD noted that this is a unique area and its juxtaposition to the central business district enhances its value as a purely residential area. The OPD was of the opinion that the character of Newport Place would be substantially diminished by even one commercial use. The Board concurs in the findings and recommendation of the OPD.

14. The Dupont Circle Citizens Association, the West End Condominium Association and two property owners in the immediate area objected to the application on the grounds that the Zoning Administrator should not have ruled that the subject application could proceed on the basis of a change and extension of a non-conforming use. The opposition argued that the site of the proposed use was never a part of the dry cleaning valet, laundry pick-up use and that the proposed use would exacerbate an already existing parking problem. The opposition stated that the proposed use is a commercial intrusion into a residential neighborhood and that the wrong address was being used for the subject site.

15. At the public hearing, the Chair ruled that the Zoning Administrator had made the determination as to the type of relief the applicant must seek. The determination could not be challenged at that stage, and the application would proceed on the basis of a change of a non-conforming use. The remedy of the opposition should have been to take an appeal from the ruling of the Zoning Administrator. The Board finds that based on Finding No. 7 the applicant has made satisfactory provisions for parking and that the proposed use will not create a parking problem. The Board finds that again based on Finding No. 7, the proposed use is a commercial use in a residential neighborhood.

16. Advisory Neighborhood Commission 2B, by letter of February 3, 1982, recommended that the application be denied. It reported at the Dupont Circle ANC 2B meeting of

December 16, 1981, the commissioners voted unanimously to recommend to the BZA that this application be denied for the following reasons:

- a. The subject premises are in a residential zone on a square that is totally residential. The entire building was rehabilitated last year for condominiums. After construction work was completed, this applicant, having bought one of the condominiums, proceeded to convert the residence to office use.
- b. The first floor portion of the premises now serving the newspaper distribution station was not previously a part of the non-conforming section. It was physically separated by partition because it served as a foyer and stairway to the upper apartments. Also, it was used as a garage. Section 7105 permits consideration of extension if no structural alterations have been made. Extensive structural alterations have been made in this section of the premises. The garage is no longer a part of the first floor and there is no longer a hall or stairway leading from this entrance to all of the above apartments.
- c. An on-site inspection by the ANC revealed that the apartment has bathrooms on the first and second floors and a kitchen on the second floor. It was the opinion of the ANC, given the enormous population loss in the city, that every building zoned residentially should so be used.
- d. In considering a change or extension of a non-conforming use, the new use or extension must be a neighborhood facility or the type of use which although not a neighborhood facility will not be objectionable. The ANC argued that the subject use conflicts with Sub-paragraph 7109.1112 which states that the non-conforming use shall not adversely affect the present character or future development of the neighborhood.
- e. The applicant has been in violation of the Regulations at least since August 1981. He is before the Board of Zoning Adjustment because neighbors reported he was in violation of the law. Sub-section 7110.4 notes there should be a registration of each non-conforming use upon a change of ownership or upon a change of operation.
- f. The use is not a neighborhood facility. It is an office intrusion in a neighborhood and is therefore objectionable. At least four people

work on the premises which does not provide parking for those people.

17. The Board is required by statute to give great weight to the issues and concerns of the Advisory Neighborhood Commission as reduced to a written recommendation. In addressing the concerns of the ANC, in addition to those of the opposition, the Board finds that since the relief sought is through special exceptions, the applicant has no burden to prove that the subject premises cannot be used for residential purposes. As previously noted, the issue whether the subject premises was part of the non-conforming use of the dry cleaners-laundry-valet services is not before the Board. The opposition's remedy was to appeal the decision of the Zoning Administrator. The Board in Finding of Fact No. 5 has concerned itself with the applicant's using the premises without a Certificate of Occupancy. Also, the applicant has done no structural alterations to the site. The renovations were completed by the developer. The applicant purchased his unit when all structural work was completed. The Board, for reasons discussed below, agrees with the ANC and the opposition that the proposed use is not a neighborhood facility and that it is objectionable.

18. At the Board's request the record was left open at the end of the public hearing. The applicant submitted materials addressing two issues raised at the hearing. Firstly, the applicant submitted a copy of the March 5, 1981 Washington Post classified ads section which offered the subject site for sale as an office. This supports the applicant's testimony that he read the ad and signed the purchase contract four days later and that he was unaware that the space may also be offered for residential use. Secondly, the applicant submitted a letter signed by Robert Arsenault of the Department of Licenses and Inspections stating that the subject lot had two possible addresses assigned to it. This letter proves that the address used by the applicant in this application was a proper address for the site.

19. The President of the condominium association of the subject building submitted a letter to the record recommending approval of the application on the grounds that the proposed use is less intense than the prior use with regard to pedestrian and auto traffic and noise.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking special exceptions, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Sub-sections 7104.2 and 7105.2 and that the relief requested

under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Sub-section 7104.2 of the Zoning Regulations provides that:

"If approved by the Board of Zoning Adjustment in accordance with the authority and procedures established in Section 7109 of this article a Class II non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted."

Section 7109 requires findings that, in summary the proposed use will be a neighborhood facility or if not a neighborhood facility it will not be objectionable.


The Board concludes that based on Finding No. 7 the services provided by the proposed use are such that the use is not a neighborhood facility. In fact, the newspaper's 2,000 subscribers reside or do business not only out of the neighborhood, they are basically out of the District of Columbia. The Board, in addressing the issue whether the use is objectionable, notes that although the proposed use is less intense than the prior use of a dry cleaning establishment and although the proposed use appears unobjectionable because of noise, litter or traffic, still the use is a commercial one involving daily deliveries and pick-ups and as such constitutes a nuisance to the immediate neighborhood. Such systematic, daily intrusions are not indigenous to a residential area. The Board concludes that these business trips affect adversely the present character or future development of the neighborhood.

The Board concludes that it has accorded to the ANC the great weight to which it is entitled. Accordingly, for the foregoing reasons, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Douglas J. Patton, Connie Fortune, William F. McIntosh and Charles R. Norris to DENY; John G. Parsons to DENY by PROXY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

JUL - 6 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."